

IC 28-8-5

Chapter 5. Cashing Checks

IC 28-8-5-1

Application of chapter

Sec. 1. (a) This chapter does not apply to a financial institution organized under IC 28 or federal law.

(b) This chapter does not apply to persons engaged in the business of cashing checks if:

(1) the transaction is incidental to the retail sale of goods or services; and

(2) consideration (as defined in section 3) for cashing checks does not exceed the greater of:

(A) one percent (1%) of the face amount of the check; or

(B) one dollar (\$1).

As added by P.L.42-1993, SEC.86. Amended by P.L.122-1994, SEC.104.

IC 28-8-5-2

Check or checks

Sec. 2. As used in this chapter, "check" or "checks" includes a check, draft, money order, or personal money order.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-2.5

Check cashing transaction

Sec. 2.5. As used in this chapter, "check cashing transaction" means a transaction under this chapter in which there is no written or implied agreement to hold the check for more than three (3) business days.

As added by P.L.80-1998, SEC.21.

IC 28-8-5-3

Consideration

Sec. 3. As used in this chapter, "consideration" includes a premium charged for the sale of goods or services in excess of the cash price of the sale of such goods or services.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-4

Department

Sec. 4. As used in this chapter, "department" means the members of the department of financial institutions.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-5

Incidental to the retail sale of goods or services

Sec. 5. As used in this chapter, "incidental to the retail sale of goods or services" means payment for the sale of goods or services, provided check cashing services are not advertised, announced, or

otherwise promoted as a service separate and apart from the retail sale.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-6

Licensed cashier of checks

Sec. 6. As used in this chapter, "licensed cashier of checks" means a person licensed by the department to engage in business pursuant to the provisions of this chapter.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-7

Licensee

Sec. 7. As used in this chapter, "licensee" means a licensed cashier of checks.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-8

Location

Sec. 8. As used in this chapter, "location" means a fixed or ambulatory place of business approved by the department.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-9

Person

Sec. 9. As used in this chapter, "person" means an individual, a partnership, an association, a joint stock association, a trust, or a corporation.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-10

Resolutions for administration of chapter

Sec. 10. The department may make regulations and establish policies and guidelines by resolution for the administration of this chapter.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-11

License requirement; applications

Sec. 11. (a) A person shall not engage in the business of cashing checks for consideration without first obtaining a license.

(b) Each application for a license shall be in writing in such form as the director may prescribe and shall include all of the following:

(1) The following information pertaining to the applicant:

(A) Name.

(B) Residence address.

(C) Business address.

(2) The following information pertaining to corporate directors of the applicant, officers of the applicant, owners of the applicant (if a proprietorship), and partners of the applicant, if

applicable:

- (A) Name.
- (B) Residence address.
- (C) Business address.

(3) The address where the applicant's office or offices will be located.

(4) Such other data, financial statements, and pertinent information as the director may require.

(c) The application shall be filed with a nonrefundable fee fixed by the department under IC 28-11-3-5.

As added by P.L.42-1993, SEC.86. Amended by P.L.122-1994, SEC.105.

IC 28-8-5-12

Determinations; issuance or refusal of licenses

Sec. 12. (a) The department shall determine the financial responsibility, business experience, character, and general fitness of the applicant before issuing the license.

(b) The department may refuse to issue a license if an applicant who is an individual has been convicted of a felony.

(c) The director of the department may request evidence of compliance with this section by the licensee. Evidence of compliance includes, but is not limited to, an official report of criminal activity from the state where the applicant resides.

As added by P.L.42-1993, SEC.86. Amended by P.L.80-1998, SEC.22; P.L.63-2001, SEC.21 and P.L.134-2001, SEC.23.

IC 28-8-5-13

Licenses not transferable or assignable

Sec. 13. A license is not transferable or assignable.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-14

Expiration of licenses

Sec. 14. A license issued pursuant to this chapter expires on July 1 of the year following the date of issuance unless earlier surrendered, suspended, or revoked.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-15

Renewal of licenses

Sec. 15. A license may be renewed for twelve (12) months upon the filing of a renewal application. Each licensee shall pay to the department before July 1 of each year a fee fixed by the department under IC 28-11-3-5 as a renewal fee. The department may fix a daily late fee under IC 28-11-3-5 for a renewal license that is not received before July 1.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-16

Check cashing requirements

Sec. 16. (a) A licensee must do the following:

- (1) Conspicuously display at each place of business a notice to the public stating the maximum charges for cashing checks.
- (2) Make payment to a customer for whom a check is being cashed upon presentment of the check.
- (3) Endorse the name in which the licensee is licensed on all checks before depositing them in a financial institution.
- (4) Cash a check made payable only to a natural person as payee unless the licensee has previously obtained appropriate documentation from a payee clearly indicating the authority of the natural person or persons cashing the check on behalf of the payee.

(b) If a licensee engages in a check cashing transaction in which the amount on the check is at least three thousand dollars (\$3,000) or in which the sum of the amounts on two (2) or more checks from the same customer on the same day total at least three thousand dollars (\$3,000), the licensee must obtain:

- (1) the thumbprint of the customer or a photograph of both the customer and the check;
- (2) the full name of the customer;
- (3) the residence address of the customer; and
- (4) the identification of the customer by:
 - (i) Social Security number;
 - (ii) driver's license number;
 - (iii) passport number; or
 - (iv) other traceable record.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-17**Check cashing fee limitations**

Sec. 17. Except as otherwise provided in this chapter, a licensee may not charge check cashing fees in excess of the greater of five dollars (\$5) or ten percent (10%) of the face amount of a check. Except as provided in this chapter, a licensee or the licensee's agent may not accept multiple checks from a:

- (1) person;
- (2) person's spouse; or
- (3) person's agent;

drawn on the person's account with the intent that the licensee may collect multiple or increased fees for cashing the checks.

As added by P.L.42-1993, SEC.86. Amended by P.L.80-1998, SEC.23.

IC 28-8-5-18**Keeping books, accounts, and records**

Sec. 18. (a) A licensee shall keep its books, accounts, and records satisfactory to the department for each transaction for at least three (3) years from the transaction date.

(b) A licensee shall keep its books, accounts, and records separate

from those of any other type of business and in a manner that reflects the order of the licensee's transactions.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-18.5

Checks drawn on valid accounts and deposited with intent to draw funds

Sec. 18.5. The check in a check cashing transaction, to the best of the licensee's knowledge, must be drawn on a valid, open, and active account and must be deposited by the licensee into a financial institution with the intent to draw the funds of that check.

As added by P.L.80-1998, SEC.24.

IC 28-8-5-19

Examination of books, accounts, and records

Sec. 19. (a) The department may examine the books, accounts, and records of a licensee and may make investigations to determine compliance.

(b) If the department examines the books, accounts, and records of a licensee, the licensee shall pay an examination fee fixed under IC 28-11-3-5. There shall be no charge for the first day of examination.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-20

Investigation procedures

Sec. 20. In making investigations concerning the compliance of a licensee the department may:

- (1) administer oaths;
- (2) subpoena witnesses; and
- (3) require the production of:
 - (i) books, documents, or other tangible items; and
 - (ii) information pertaining to the identity of and location of persons having knowledge of facts concerning compliance with this chapter.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-21

Examination of records located outside Indiana

Sec. 21. If the licensee's records are located outside Indiana, the licensee shall either make them available to the department at a convenient location within Indiana or pay the reasonable and necessary expenses for the department or its representative to examine them at the place where they are maintained.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-22

Suspension and revocation of licenses

Sec. 22. (a) The department may suspend or revoke a license issued under this chapter pursuant to the provisions in IC 4-21.5 for:

- (1) violating this chapter; or
- (2) any reason that would be sufficient to deny an initial application for a license.

(b) If the director of the department:

- (1) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
- (2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6.

As added by P.L.42-1993, SEC.86. Amended by P.L.176-1996, SEC.25; P.L.80-1998, SEC.25.

IC 28-8-5-22.5

Failure to file renewal form or pay renewal fee

Sec. 22.5. (a) A license issued by the department under this chapter shall be revoked by the department if the person fails to:

- (1) file any renewal form required by the department; or
- (2) pay any license renewal fee described under section 15 of this chapter;

for a period of at least two (2) years.

(b) A person whose license is revoked under this section may:

- (1) pay all delinquent fees and apply for a new license; or
- (2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

As added by P.L.176-1996, SEC.26.

IC 28-8-5-23

Investigations; void check cashing transactions

Sec. 23. (a) If the department determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the department may investigate the person.

(b) If a person knowingly acts as a cashier of checks without the license required by section 12 of this chapter, the check cashing transaction is void and the customer is not required to pay any check cashing fees to the person. If the customer has paid any check cashing fees to the person, the customer, or the department on behalf of the customer, is entitled to recover the payment from the person.

As added by P.L.42-1993, SEC.86. Amended by P.L.172-1997, SEC.24.

IC 28-8-5-24

Civil penalties

Sec. 24. (a) The department may bring a civil action against a person for violating this chapter.

(b) If the court finds that the defendant is guilty of an offense under subsection (a), the court may assess a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

(c) Civil penalties collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9.
As added by P.L.42-1993, SEC.86.

IC 28-8-5-25

Violations

Sec. 25. A licensee who violates the provisions of this chapter commits a Class A misdemeanor.

As added by P.L.42-1993, SEC.86.